

Aggregate Compliance Determinations for Foreign Agricultural Land

Briefing for Margo Oge
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Background

- ❑ In order to address concerns over potential burden of recordkeeping and reporting for commodity crops (e.g., corn, soybeans) used for renewable fuel, we finalized an aggregate compliance approach for all planted crops and crop residue from U.S. agricultural land
 - ※ Approach established baseline number of acres for agricultural land in U.S. in 2007 and deemed any planted crop or crop residue taken from those existing acres as compliant with the “renewable biomass” definition
- ❑ EPA established baseline acreage using USDA data and will use data to verify annual ag land acreage remains at or below baseline
 - ※ If baseline is exceeded, U.S. planted crops and crop residue will be subject to the recordkeeping and reporting requirements in RFS2 regs beginning July 1 of the following compliance year
- ❑ In preamble to final RFS2 rule, we said that we would consider applying the same approach to other countries if “adequate land use data becomes available to make a finding that... crops and crop residues...satisfy the definition of renewable biomass”
 - ※ We had received several comments on NPRM advocating both for and against a similar baseline approach for foreign feedstocks
- ❑ Since RFS2 was signed, we have received inquiries from trade associations in Brazil and Canada on how they may pursue this option, as well as preliminary data to support requests
 - ※ Brazil is interested in approval for sugarcane from South-Central region
 - ※ Canada is interested in approval for canola

Justifications for U.S. agricultural land aggregate compliance approach (from preamble)

- Data allows EPA to obtain an appropriately representative estimate of the agricultural lands available for agricultural crop production according to the EISA definition of renewable biomass
- Overall trend of agricultural land utilization demonstrates land contraction (1997-2007), along with evidence that there is sufficient land available in the near term to satisfy EISA obligations and other foreseeable unrelated RFS2 product demands
 - Further, our 2022 analysis also supports/indicates that at full implementation of RFS2, land utilization will not exceed baseline (based on our feedstock/fuel assumptions)
- Economic factors for feedstock producers favor efficient use of existing agricultural land rather than conversion of non-agricultural lands to crop production
- Precautionary investigatory trigger if total agricultural land utilization comes within 5 million acres (approximately 1.2 percent) of the established baseline
- If 2007 baseline is exceeded, renewable fuel producers using planted crops and crop residue from U.S. must begin to meet individual recordkeeping and reporting requirements for feedstocks (or submit and have a plan approved for a consortium based compliance approach)

NPRM or DFR?

- ❑ The current aggregate compliance regulations for RFS2 are meant to apply only to U.S. agricultural land, so the final regulations would need to be changed to apply to agricultural land in another country
- ❑ A change to the regulations could potentially affect thousands of parties (e.g., farmers, distributors) and we anticipate comment from both domestic and foreign stakeholders
- ❑ We therefore anticipate having to conduct a notice and comment rulemaking, with potential for a direct final rule depending on the issues and level of stakeholder involvement
- ❑ 2008 TX RFS waiver notice and comment process could serve as useful model
 - Initial FR notice sought comment on a variety of issues related to waiver request, established a public docket and provided 30 day comment period
 - Notice of final decision explained rationale of decision and laid out guidance for future requests

Potential stakeholder reaction (based on comments to RFS2 NPRM)

- ❑ General pro aggregate compliance approach for foreign feedstocks
 - ※ Malaysian Palm Oil Board
 - ※ Indonesian Palm Oil Commission
 - ※ NBB
 - ❑ Comments on NPRM demonstrated concern that domestic renewable fuel producers would be unable to seek feedstock from outside the U.S due to burden of feedstock verification
 - ※ UNICA
- ❑ General anti aggregate compliance approach for foreign feedstocks
 - ※ RFA
 - ※ Alliance of Automobile Manufacturers
 - ※ Georgia Forestry Commission (and likely other U.S. forest/plantation owners)
 - ❑ GFC comments on NPRM demonstrated concern that imported renewable fuel would be favored over domestic renewable fuel from well-managed woody biomass sources
 - ※ Environmental groups (e.g. Institute for Agriculture and Trade Policy, Western Organization of Resource Councils)
 - ❑ Comments on NPRM supported complete ban on imported renewable fuel to minimize direct land use change
- ❑ We anticipate variable stakeholder comments depending on the country under consideration
 - ※ Canada
 - ※ Brazil
 - ※ Malaysia

Process

- ❑ Interested parties have inquired about the process for approval of the aggregate compliance approach for their country/feedstock
 - Parties are eager to get process started in hopes of EPA making determination prior to July 1, 2010
- ❑ Initial thoughts on process for handling requests
 - Work through government counterparts rather than directly with industry, at least initially
 - Need to determine if State, USTR need to be involved as well
 - Similar to method used for U.S. ag land determination, require
 - Real data available on an annual basis and timely enough for us to make annual finding
 - Assurance that data collection will be ongoing
 - Recordkeeping and reporting requirements to apply if data is unavailable or baseline is found to have been exceeded
 - Need to consider other issues related to
 - Data quality, data sources, definitions (e.g. rangeland vs. pastureland)
 - Trends in ag land utilization (i.e. ag land contraction vs. expansion)
 - Country-specific policies and economic conditions that may affect ag land utilization in the future

Next steps

- ❑ Brief AA
- ❑ Determine extent to which other USG offices need to be involved, if at all
- ❑ Begin dialogue with Canadian, Brazilian counterparts